

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAN S. LEE,

Defendant-Appellant.

UNPUBLISHED

January 24, 2003

No. 234925

Wayne Circuit Court

LC No. 00-008533

Before: Cooper, P.J., and Bandstra and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of one count of criminal sexual conduct in the first degree (CSC I), the victim being under thirteen years of age, MCL 750.520b(1)(a), and one count of criminal sexual conduct in the second degree (CSC II), the victim being under thirteen years of age, MCL 750.520c(1)(a), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At trial Deborah Matuniak testified that in June 2000, complainant (her son's girlfriend) revealed something to her. Defense counsel objected to the witness testifying to the content of the statement made to her. The trial court sustained the objection, finding that the content of complainant's statement would be hearsay. Matuniak testified that complainant needed to speak with an adult, and told her that "she had been sexually . . ." The prosecutor immediately interrupted Matuniak and asked her to explain complainant's emotional state without relating the content of complainant's statement. Matuniak indicated that complainant was distressed.

Complainant, defendant's daughter, testified that beginning in 1992 when she was seven or eight years old defendant sexually molested her on several occasions by penetrating her vagina with his penis, tongue, and fingers. Complainant also stated that defendant touched her breasts during the same period. Complainant stated that she did not reveal the abuse to anyone before the year 2000 because she was afraid and because she did not want to hurt her mother.

The trial court found defendant guilty of one count of CSC I and one count of CSC II. The court found complainant's testimony that defendant penetrated her vagina with his tongue and touched her breasts when she was seven or eight years old to be credible.

A person is guilty of CSC I if he engages in sexual penetration with another person who is under thirteen years of age. MCL 750.520b(1)(a). "Sexual penetration" includes any

“intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body” MCL 750.520a(1). A person is guilty of CSC II if he engages in sexual contact with a person who is under thirteen years of age. MCL 750.520c(1)(a). “Sexual contact” is defined as touching that can “reasonably be construed as being for the purpose of sexual arousal or gratification.” MCL 750.520a(k).

We review a trial court’s determination of an evidentiary issue for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

Defendant argues the trial court abused its discretion by failing to strike Matuniak’s testimony that complainant started to tell her she had been sexually abused, and asserts that given the weakness of the prosecution’s case, it cannot be assumed the trial court’s verdict was not tainted by the inadmissible evidence. We disagree and affirm defendant’s convictions. Whether erroneously admitted evidence requires reversal depends on the nature of the error and its effect in light of the weight of the properly admitted evidence. *People v Smith*, 456 Mich 543, 555; 581 NW2d 654 (1998). Matuniak’s brief testimony regarding the substance of complainant’s statement to her allowed the introduction into evidence of inadmissible hearsay. However, a judge sitting as the factfinder is presumed to understand the law and to be able to ignore evidentiary errors and decide a case based solely on properly admitted evidence. *People v Taylor*, 245 Mich App 293, 305; 628 NW2d 55 (2001).

Complainant testified that defendant engaged in sexual penetration and sexual contact with her when she was seven or eight years old. The testimony of a victim in a CSC case does not require corroboration. MCL 750.520h. The exact date of a sexual assault offense need not be specified or proven. *People v Watson*, 245 Mich App 572, 588-589; 629 NW2d 411 (2001). Complainant’s testimony, which the trial court was entitled to find credible, *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989), established the elements of CSC I and CSC II. MCL 750.520b(1)(a); MCL 750.520c(1)(a). The record fails to affirmatively demonstrate that it is more probable than not that the evidentiary error was outcome determinative. Reversal is not required. MCL 769.26.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard A. Bandstra
/s/ Michael J. Talbot